

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**BESSEMER SYSTEM FEDERAL CREDIT
UNION, on behalf of itself and its members,**

Plaintiff,

vs.

Case No. 2:19-cv-00624-RJC

**FISERV SOLUTIONS, LLC, f/k/a FISERV
SOLUTIONS, INC., and FISERV, INC.,**

Defendants.

**DECLARATION OF CHARLES J. NERKO
IN SUPPORT OF BESSEMER'S MOTION TO COMPEL FISERV TO LOG
COMMUNICATIONS AFTER JUNE 30, 2019**

Charles J. Nerko declares under penalties of perjury:

1. I am a partner at Barclay Damon LLP and counsel to plaintiff Bessemer System Federal Credit Union.
2. During a conference between counsel for both parties, counsel for Fiserv made clear that it would not produce a privilege log of communications after June 30, 2019, apparently on the grounds that Fiserv returned Bessemer its record on that date.
3. Counsel for Bessemer explained that a privilege log of these communications is both relevant and necessary in light of Fiserv's ongoing misconduct as it relates to its continued wrongful withholding of Bessemer's member account records and information. Specifically, the log is necessary for Bessemer to fully prosecute its bailment and declaratory judgment claims.
4. Counsel for both parties have engaged in several discussions related to this discovery dispute, but have been unable to come to a resolution, necessitating the filing of the within motion.

5. For all the reasons set forth herein and in Bessemer's accompanying memorandum of law, it is respectfully requested that the Court: (i) grant Bessemer's motion to compel Fiserv to produce a log of communications post-dating June 30, 2019; (ii) enter Bessemer's proposed order attached to Bessemer's motion; (iii) grant Bessemer's request, pursuant to FRCP 37(a)(5)(A), for attorneys' fees and expenses incurred in making the within motion; and (iv) granting such other and further relief that may be proper.

Dated: January 31, 2022

/s/ Charles J. Nerko
Charles J. Nerko